

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 06-0466P

Sales Tax

For the month of August 2006

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC § 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment and filing of a monthly sales tax return for the period August 2006. The taxpayer is an out-of-state taxpayer.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the error was inadvertent, and, the taxpayer says the taxpayer has a quality compliance record.

With regard to the inadvertent error, the error is the result of employee turnover. The Department has consistently held that employers are responsible for the actions of their respective work force. In this case, errors were caused by excessive employee turnover. As the employer (taxpayer) is responsible for the excessive turnover, the employer (taxpayer) is deemed inattentive to tax duties.

With regard to the compliance record, the taxpayer has had two abatements in the past. There was an abatement in February 2003 for \$644.66, and another abatement in March 2003 for \$680.63. As a result of these abatements, the Department does not feel the taxpayer's compliance record would be a factor in the abatement of penalty.

The regulation which references inattention is 45 IAC 15-11-2(b) which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the taxpayer's penalty protest is denied.

FINDING

The taxpayer's penalty protest is denied.